



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

FILE

Date: SEP 24 2003

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are organized as a nonprofit charitable or religious corporation under law. According to your Articles of Incorporation, you are organized for religious and charitable purposes.

According to your application Form 1023, you are "an interdenominational group of Christians committed to helping homeless, poor youth, focusing on their social and spiritual rehabilitation through the activities of providing shelter, clothing, food, personal hygiene, medical attention, job training, help with criminal and legal issues, [and] bible studies."

You will conduct many of your activities at a acre horse ranch in (the " "). The is owned by and , and its use is donated to you. The will provide some housing for homeless youth and activities such as camping, fishing, gardening, and horseback riding. In time, you expect to make available a pottery studio, blacksmithing shed, and woodworking shop to encourage and teach productive lifestyle skills.

You intend to "provide shelter, food and accountable relationship in long-term housing in storefronts and warehouses, and on rural youth camps, farms, and ranches in , and in other cities and countries...." You have housed homeless youth at the , generally for periods of one to three weeks.

You intend to provide job training to homeless youth that stay with you. Although you have not yet developed a job-training program, you foresee providing training in carpentry, woodworking, and construction skills.

[REDACTED]

You "will use music bands, concerts, and will operate one or more music studios to provide opportunities for youth with musical gifts and talents to be trained and encouraged. These opportunities will be at no cost to the youth...." In your letter of [REDACTED], you state that the training "is more focused on informal 'jamming' referred to as 'porch music' where 3-10 kids jam together with some of our staff musicians."

You have organized your own recording studio for the purpose of recording the original music of poor youth. You will not charge for the homeless youth for your services, and you do not intend to market the recordings. You will host musical events in the activity barn and in outdoor locations.

You state that you are a "church plant (a new church) sent out from [your] parent church in [REDACTED].... [You seek] to form a church in [REDACTED] and other cities to bring the gospel to poor and homeless street kids who are typically drug and alcohol addicted with many destructive lifestyle issues. [You] will feed, clothe, and shelter hundreds of these youth in the course of a year and many will become Christians and members of a church."

You conduct worship services five days a week at the [REDACTED]. Your worship service consists of prayer, worship with music, ministry, offering and sermon. You conduct music and food outreach activities during which it encourages the poor and homeless to attend church. You have 10 active members enrolled in the church. The average attendance at worship services is 10-12. In your letter of [REDACTED], you state that, aside from your officers, staff, and their families "occasionally 2-4 other persons or guests have attended our daily worship services."

You have a "senior pastor," [REDACTED], and four ministers, [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] is currently your only ordained pastor.

You estimate that only 10% of staff time is devoted to the daily worship service. Most of the activities involve the outreach ministries with homeless youth.

Your directors make "gifts" to individuals (pastors, itinerant ministries and church plants) "all of whom we know from personal relationship." You state that "typically the most compelling criteria [for making gifts and grants] is the Holy Spirit prompting me ([REDACTED]) or my wife ... to give."

A listing of income and expenses accompanying your letter of [REDACTED], shows [REDACTED] income of \$[REDACTED]. Of that \$[REDACTED] was from "tithing" by [REDACTED]. In your letter of [REDACTED], you state that the [REDACTED] titled [REDACTED] percent of their [REDACTED] adjusted gross income to you. Expenses for [REDACTED] and [REDACTED] show multiple "gifts" to [REDACTED], and [REDACTED] (a staff member), as well as to other individuals whom you identify as "itinerant ministers." You characterize the payments to [REDACTED] and [REDACTED] as "gifts" and "missionary support" that you do not believe should be treated as income to the recipient. [REDACTED] and [REDACTED] typically receive "gifts" of \$[REDACTED] a month from you, and [REDACTED] typically receives "gifts" of \$[REDACTED] a month. You state that all such "gifts" are approved by [REDACTED].

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You have three directors: ██████████ and ██████████. ██████████ and ██████████ are husband and wife. All directors, ministers, and staff live on the ██████████.

Article II of your Bylaws concerns "Directors." Section 2.01 provides that "the property and business of the corporation shall be managed by its Board of Directors."

Section 2.03 of the Bylaws provides that "each director shall be elected by a two-thirds ... vote of the entire Board of Directors at the annual meeting of the Directors...."

Section 2.10 of the Bylaws provides that "a majority of the number of Directors stated in the Articles of Incorporation or the number last fixed by the Directors, as the case may be, at a meeting duly assembled, shall constitute a quorum for the transaction of business, and the act of a majority of such Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors...."

Section V of the Bylaws concerns "Officers." Section 5.01 provides that "the Board of Directors at its annual meeting shall elect a President, a Secretary, and a Treasurer, and may elect a Chairman of the Board and one or more Vice Presidents."

Section 5.04 of the Bylaws provides that the salaries of the Officers of the corporation shall be fixed by the Board of Directors...."

The minutes of your Board of Directors meeting of ██████████, indicate that your Board of Directors, consisting of ██████████ and ██████████, met and elected ██████████ as Chairman and President of the Board, ██████████ as Vice-Chairman, and ██████████ as Secretary and Treasurer. You intend to pay ██████████ compensation.

Law:

Section 501(a) of the Internal Revenue Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code describes corporations, trusts, and associations organized and operated exclusively for religious and other charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus to meet the requirement of this subdivision, it is necessary

for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The court in American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C. 1980), addressed the concept of "church" for purposes of section 501(c)(3). It noted that the Service had developed fourteen criteria which it applies in determining whether an organization qualifies as a church:

- 1) a distinct legal existence;
- 2) a recognized creed and form of worship;
- 3) a definite and distinct ecclesiastical government;
- 4) a formal code of doctrine and discipline;
- 5) a distinct religious history;
- 6) a membership not associated with any other church or denomination;
- 7) an organization of ordained ministers;
- 8) ordained ministers selected after completing prescribed studies;
- 9) a literature of its own;
- 10) established places of worship;
- 11) regular congregations;
- 12) regular religious services;
- 13) Sunday schools for religious instruction of the young; and
- 14) schools for the preparation of ministers.

The court analyzed these criteria and stated that "while some of these are relatively minor, others, e.g., the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance." The court stated that "at a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role."

In Spiritual Outreach Society v. Comm'r, 927 F.2d 335 (8th Cir. 1991), the court noted that of central importance is the existence of an established congregation served by an organized ministry. The facts failed to show that participants in the organization's activities considered the organization to be their church. Thus, the participants did not form a congregation.

In Church of Eternal Life and Liberty, Inc. v. Comm'r, 86 T.C. 916 (1986), the Tax Court defined a church, for purposes of section 170(b)(1)(A)(i) of the Code, as "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." In other words, a church's principal means of accomplishing its religious purposes must be to assemble regularly as a group of individuals related by common worship and faith. The court found that a two-person congregation did not satisfy the "threshold test" for church status, the associational role. The determining factor was not that its congregation had only two

members, but that it had not increased in size since its inception and made no attempts to attract new members.

In De La Salle Institute v. United States, 195 F. Supp. 891 (N.D. Cal. 1961), the court, in considering an organization that conducted church activities as an incidental part of its overall activities, held that the organization was not a church, stating that "the tail cannot be permitted to wag the dog."

Analysis:

In order to be exempt as an organization described in section 501(c)(3) of the Code, you must be organized and operated exclusively for one or more exempt purposes. You are not organized or operated exclusively for one or more exempt purposes unless you serve a public rather than a private interest. Thus, to meet this requirement, you must establish that you are not organized or operated for the benefit of private interests such as the creator or his family. You have failed to establish that you are so organized or operated.

You are organized such that [REDACTED] and his spouse, [REDACTED], exercise complete dominion over your affairs. [REDACTED] and [REDACTED] are two of your three directors. They are two of your three officers: [REDACTED] is your president and [REDACTED] is your secretary and treasurer. [REDACTED] is your "Senior Pastor, and [REDACTED] is one of your four "Ministers." Your only other director, [REDACTED], resides at the [REDACTED] owned by [REDACTED] and [REDACTED] and is dependent on "gifts" approved by [REDACTED] for his support. Your activities are conducted primarily at the [REDACTED] owned by [REDACTED].

Under the provisions of your Bylaws, [REDACTED], in constituting the majority of your directors, exercise complete control over your Board of Directors. Thus, under the Bylaws, they have the power to choose new directors, appoint and remove officers, set the salaries of officers and staff (including their own salaries), enter into contracts, and make gifts, grants and support payments.

Over one-third of your income in [REDACTED] was received from [REDACTED], who tithe to you [REDACTED] percent of their adjusted gross income. In turn, [REDACTED], acting as your President, caused you to pay "gifts" to evangelists and ministers of [REDACTED]'s acquaintance. [REDACTED] also caused you to pay monthly "gifts" to two of your ministers and a staff member. In addition, [REDACTED] approves all travel expenses paid by you, including ministry-related travel by [REDACTED].

Conclusion:

We find that your "gift," salary, travel and other expenditures are made at the whim and pleasure of [REDACTED]. Therefore, we conclude that you are organized and operated for the benefit of private, rather than public, interests in violation of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

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Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

Even if you had qualified for exemption under section 501(c)(3) of the Code, you would still not have qualified as a church under section 170(b)(1)(A)(i) of the Code.

You intend to engage in a variety of activities. You intend to provide shelter, clothing, food, and recreation to poor and homeless youth. You intend to provide musical training and training in carpentry, woodworking, and construction to homeless youth. You intend to operate a recording studio to record the music of homeless youth. In addition, you conduct a worship service several days a week at the ██████████.

You state that only ten percent of your staff time is devoted to daily worship service. You state that "occasionally 2-4 other persons or guests have attended our daily worship services. Primarily, our services are attended by officers, staff, and families."

Like the organization in American Guidance Foundation, Inc. v. United States, supra, you lack several essential characteristics of a church. You do not have regular youth members, only occasional "guests." It appears that you provide little religious instruction to your congregation outside of the worship service. You have not disseminated a formal doctrinal code.

The court in American Guidance Foundation, Inc. v. United States, supra, defined a church as "a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role." Your worship services are not reasonably available to the public. You hold church services at a ██████████ owned by ██████████. You do not publicize your worship services to the public. You have 10 church members and average 10 congregants at weekly services. The only attendees aside from your officers, staff and family members are "guests" and youth you invite for temporary stays at the ██████████. Like the organization in Church of Eternal Life and Liberty, Inc. v. Comm'r, you appear to make little effort to attract new members to your congregation.

In De La Salle Institute v. United States, supra, the court held that an organization was not a church because church activities constituted an incidental part of the organization's overall activities. It is obvious that you devote far more time and money to providing shelter and training to homeless youth than to conducting services for an established congregation of believers or communicants. Since common worship by a regular assembly is but a small part of your overall activities, you cannot be considered a church.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted.

[REDACTED]

You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
TE/GE ([REDACTED])  
[REDACTED]  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

In the alternative, you may fax your response to: ([REDACTED]).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,  
(signed) [REDACTED]

[REDACTED]  
Manager, Exempt Organizations  
Technical Group 2

Initiator [REDACTED]